



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2017

CORAM :

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No.117 of 2015

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... Appellant/Petitioner

Vs.

R.Selvaraj (died)

1.G.Vijayadoss

2.The Branch Manager,

United India Insurance Company Limited,

Assisi Complex,

P.W.D. Road, Nagercoil,

Agasteeswaram Taluk,

Kanyakumari District.

3.Raja Singh

... Respondents/Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal and modify the award passed in M.C,O.P.No.357 of 2009 dated 10.09.2013, on the file of the Motor Accident Claims Tribunal/II Additional Subordinate Judge, Nagercoil, Kanyakumari District.

For Appellant

: Mrs.E.Elis Chitra Devi

For Respondents

: Mr.N.Siva Kumar for R2

No Appearance for R1 & R3

JUDGMENT

Heard the learned counsel on either side.

2.The claimant has filed this appeal seeking enhancement of the compensation payable to him. The accident took place on 28.05.2006. He was travelling as a pillion rider in a two-wheeler, when a Tata Indica car insured with the United India Insurance Company Limited dashed against the two-wheeler. The claimant fell down and suffered fractures in his right leg. He was treated as an inpatient in Sri Ram Orthopaedic Hospital. Later, he took treatment in another private hospital. After some 19 months, second surgery was required and again he had to be admitted in hospital. Even though, the accident took place in the year 2006, the claimant filed the petition only in the year 2009. But the Court below came to the finding that the claimant was the injured victim in the accident and



the petition was allowed. But only a sum of Rs.34,000/- was awarded. Contending that this is inadequate, this appeal has been filed.

3. It is beyond dispute that the appellant herein was injured in the accident. It is again not in a dispute that a criminal case was registered immediately, Charge Sheet was also filed later. The Criminal Court found the accused guilty. That is why, the Tribunal gave a finding that the accident occurred on account of the rash and negligent driving of the driver of the Tata Indica car. Since the said offending car was insured with the United India Insurance Company Limited, liability was fastened on the Insurance Company. The only question is whether the quantum of compensation awarded is just and fair. The claimant suffered fractures in his right leg.

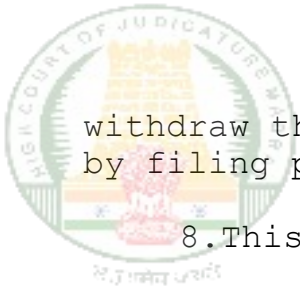
4. It is seen from the record that PW2 gave a certificate certifying that the disability suffered by the claimant was assessed at 35%. The Tribunal has chosen to disregard the same on the ground that it was issued by a doctor who did not treat the claimant.

5. I am of the view that considering the facts and circumstances of the case, the disability suffered by the claimant can be fixed at 25%. It is also seen that the claimant underwent the second surgery after a gap of nineteen months. This Court comes to the conclusion that it is relatable to the accident in question. The deposition of the claimant as PW1 is clear and convincing. I am of the view that the compensation payable to the claimant will have to be enhanced and reworked as under:-

Sl.No.	Heads	Amounts in Rupees
1.	For Disability	Rs. 75,000/-
2.	For pain and suffering	Rs. 35,000/-
3.	For attender charges	Rs. 10,000/-
4.	For extra nourishment	Rs. 10,000/-
5.	For loss of income	Rs. 4,000/-
	Total	Rs. 1,34,000/-

6. The compensation payable to the claimant will have to be enhanced from Rs.34,000/- to Rs.1,34,000/-. The award dated 10.09.2013, made in M.C.O.P.No.357 of 2009, on the file of the Motor Accident Claims Tribunal/II Additional Subordinate Judge, Nagercoil, Kanyakumari District is modified accordingly.

7. The second respondent/Insurance Company is directed to deposit the compensation amount of Rs.1,34,000/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, (excluding the period of dismissal for want of prosecution) before the Tribunal within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is entitled to



withdraw the same, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal.

8. This Civil Miscellaneous Appeal stands allowed. No costs.

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Sd/-

Assistant Registrar(C.O)

Sub-Assistant Registrar

To

1. The II Additional Subordinate Judge,
The Motor Accident Claims Tribunal,
Nagercoil, Kanyakumari District.

2. The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to M/s.A.Elis Chitradevi, Advocate, SR.No.89719

+One cc to Mr.N.Sivakumar, Advocate, SR.No.89745

Copy to:-

1. Mr.G.Vijayadoss, S/o.Chinnamoni,
Kesavathiruppuram,
Nagercoil,
Kanyakumari District

2. Raja Singh, S.Selvaraj,
Varuvel Teacher Compound,
Hendry Road, Nagercoil, Agastheeswarm Taluk,
Kanyakumari District

tsg

RL/8C/3P/KKR/SAR1/8/2/2018

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